

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADAM SICARD, individually and on behalf of
others similarly situated,

Plaintiff,

-against-

KIRKLAND'S STORES, INC.,

Defendants.

ORDER

22-CV-7180 (PMH)

PHILIP M. HALPERN, United States District Judge:

A pre-motion conference was held on April 18, 2023. Counsel for all parties appeared by telephone. As discussed on the record, the Court heard argument on Defendant's contemplated motion to strike Plaintiff's class allegations and Defendant's contemplated motion to dismiss Plaintiff's Complaint in its entirety, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Defendant withdrew its motion to strike class allegations at the conference on consent.

The Court construed Defendant's pre-motion letter (Doc. 12) as its motion to dismiss and Plaintiff's response letter (Doc. 13) as its opposition, and considering the parties' arguments thereto, dismissed the motion for the reasons stated on the record. (*See* Transcript); *See In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011) (finding the Court did not abuse its discretion in construing the parties' letter-motions as the motions themselves, and ruling on them). Specifically, the Court cited the myriad of district court decisions in the Second Circuit rejecting Defendant's arguments related to standing and injury. *See, i.e. Harris v. Old Navy, LLC.*, No. 1:21-CV-9946-GHW, 2023 WL 2139688, at *1 (S.D.N.Y. Feb. 20, 2023). Accordingly, Defendant's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6) is denied.

Defendant is directed to file its Answer by May 2, 2023. A Civil Case Management Discovery Plan will be docketed separately.

SO ORDERED:

Dated: White Plains, New York
April 18, 2023

A handwritten signature in black ink, appearing to read 'PHM', with a long, sweeping checkmark-like stroke extending from the end of the signature.

PHILIP M. HALPERN
United States District Judge